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ABSTRACT

On the twentieth anniversary of Brown vs. Board of Education, it seems appropriate for the Commission on Civil Rights to commemorate the Supreme Court's decision with an examination of the civil rights progress between 1954 and 1974. The first report in the series provided a brief historical background. This second report covers equality of educational opportunity. Among the report's findings are the following: school desegregation has progressed substantially in the South; progress in the North has been minimal; without positive action, segregation in urban areas (both North and South) appears likely to increase, and urban-suburban racial subdivisions will be intensified; most fears about school desegregation have proved groundless, and desegregation is working where it has been genuinely attempted; "freedom of choice" has proved a totally ineffective method of school desegregation; the federal government's commitment to desegregation must include the termination of federal assistance to school systems maintaining segregated schools; desegregation of dual school systems has often resulted in displacement or demotion of black school staff; and, there is evidence that disciplinary action against minority pupils in some desegregated schools has resulted in high numbers of expulsions and suspensions. (Author/JM)

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TWENTY YEARS AFTER BROWN:

EQUALITY OF EDUCATIONAL OPPORTUNITY

A Report of the
U.S. Commission on Civil Rights
March 1975

UD 014568

Second in a series

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

Letter of Transmittal

U.S. Commission on Civil Rights
Washington, D.C.
March 1973

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

The Commission on Civil Rights presents this report in the area of Equality of Educational Opportunity, as mandated.

This is the second in a series of reports which will examine the extent of civil rights progress in the United States since Brown v. Board of Education, the Supreme Court's landmark school desegregation decision of May 17, 1954. The first report provided historical background for the series. This report covers the evolution of educational opportunity during the 19 years since Brown. Subsequent reports will offer specific recommendations for achieving equal opportunity, where it is lacking, in employment, housing, public accommodations, and the administration of justice.

We believe that these reports, issued in commemoration of the 20th anniversary of Brown, may be of help to federal, state, and local officials, as well as to all Americans concerned with racial justice. We hope that these reports will contribute to an informed public discussion of Brown, the status of civil rights today, and paths to racial equality in the future.

We urge your consideration of the information, findings, and recommendations presented here.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

Abstract

On September 9, 1957, President Dwight D. Eisenhower signed into law the first civil rights act in the United States in 82 years. Under Title I, the U.S. Commission on Civil Rights was established as a temporary, independent, bipartisan, federal agency. Robert Secretary of State Dean Acheson hailed the seven pieces of legislation as the greatest achievement in the field of civil rights since the XIV[th] amendment,[1] and historian Carter Wood Goodrich described the Commission as "but one manifestation of the belated response of a people to injustices people in the legislative and executive to make good the promises of democracy in support of equal protection of the laws regardless of race, color, religion, or national origin."[2]

In fact, both the civil rights act of 1957 and the U.S. Commission on civil rights were primarily the result of Brown v. Board of Education,[3] the Supreme Court's landmark school desegregation decision in 1954. It was Southern resistance to compliance with Brown which led to mounting civil rights pressure and the consequent decision of the Eisenhower administration to introduce the civil rights legislation,[4] and it was this same resistance which produced almost a 3-year delay in passage of the civil rights act and creation of the Commission.

The President, in his 1956 state of the Union message, had asked Congress to create a civil rights commission[5] to investigate charges "that in some localities...legal citizens are being deprived of their

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1. Dean Acheson, "A Word of Praise," Reporter, Sept. 5, 1957, p. 5.

2. Carter Wood Goodrich, The Civil Rights Commission, 1957-1961 (Lansing: Michigan State University Press, 1966), p. 14.

3. 347 U.S. 483 (1954).

4. Goodrich, The Civil Rights Commission, p. 3.

5. To Secure These Rights, the 1947 report of President Harry S. Truman's Committee on Civil Rights, previously had recommended creation of such a commission to study the whole civil rights problem and make recommendations for its solution.

In Sweatt v. Painter,[13] the Court ruled that Texas could not provide black students with equal educational opportunity in a separate law school. The fact that the facilities at the University of Texas Law School were superior to those at the black law school was not the key factor upon which the decision turned. Instead, the crucial point was the fact that the University of Texas "possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school."[14]

Among the items considered by the Court in its evaluation of the two law schools was their comparative "standing in the community." In addition, the Court said:

> Moreover, although the law is a highly learned profession, we are well aware that it is an extremely practical one. The law school, the providing ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85 percent of the population of the State and include most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.[15]

In another case the same year, McLaurin v. Oklahoma State Regents for Higher Education,[16] the Court required that a black student be treated like all other students and not be segregated

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13. 339 U.S. 629 (1950).

14. Ibid. at 634.

15. Ibid.

16. 339 U.S. 637 (1950).

within the institution. Engaging in discussions and exchanging views with other students, the Justices declared, are "intangible considerations" indispensable to equal educational opportunity.

These cases led to the Brown ruling, where it was held that school segregation, which the Court had invalidated in Sweatt and McLaurin because of the particular harm demonstrated in those cases, was universally detrimental to black children. The Court quoted those passages from Sweatt and McLaurin in which it had stressed intangible considerations affecting equal educational opportunity, declaring:

> such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[17]

Brown was a consolidated opinion covering cases arising in four States: Kansas, Delaware, Virginia, and South Carolina. A common issue justified their consideration together and resulted in a ruling that legally-compelled segregation of students by race is a deprivation of the equal protection of the laws as guaranteed by the 14th amendment. Although the holding in Brown clearly was directed against legally-sanctioned segregation, language in Brown gives support to a broader interpretation. The Court expressly recognized the inherent inequality of all segregation, noting only that the sanction of law gives it greater effect.

Finding that Topeka, Kansas, operated a dual school system with separate schools for whites and blacks, the Court said: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal" (emphasis added). Here, Brown reflected concern for segregation resulting from factors other than legal compulsion. For

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17. 347 U.S. at 494.

those drawing a sharp distinction between de facto and de jure segregation, a critical thrust of Brown is, therefore, ignored. Although the Supreme Court has not yet ruled that racial imbalance or de facto segregation is unconstitutional and, therefore, illegal.

De jure segregation refers to deliberate, official separation of students on the basis of race, as in the school districts covered by the Brown cases and in other school systems operated under State laws requiring separation. De facto segregation refers to racial separation that arises adventitiously, without official action or acquiescence. Such "accidental" segregation has often been said to exist in Northern and Western school districts where no history of legal compulsion or State action has been found. However, illegal segregation may be caused by actions of school officials--for example, through gerrymandering of attendance boundaries--even though such segregation is not officially recognized.

One year after Brown I, the question of a remedy for segregation was argued before the Supreme Court. The standard for implementation of desegregation then established by Brown II required a "good faith" start in the transformation from a dual to a unitary system, under the jurisdiction of district courts, "with all deliberate speed." The Court also permitted limited delays in achieving complete desegregation if a school board could "establish that such time is necessary in the public interest."

On the level of higher education, however, the Court made no such concessions, ruling in Hawkins v. Board of Control of Florida[18] that "all deliberate speed" was applicable only to elementary and secondary schools. The immediate right to equal education remained intact at all levels of education beyond secondary school.

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18. 350 U.S. 413 (1956).

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POST-BROWN CASES IN THE SOUTH

Despite the slow pace of desegregation under "all deliberate speed," fierce and concerted resistance followed the implementing decree. Black plaintiffs had to return to the courts repeatedly to secure implementation of Brown. The doctrine of "all deliberate speed" provided a mechanism for delay, but the Supreme Court did make clear in Cooper v. Aaron[19] that unequivocal resistance would be firmly condemned.

In that case, the Little Rock, Arkansas, school board requested a stay of its 1958 integration plan because of pervasive public hostility. The Governor had dispatched National Guard units to prevent black students from entering the high school, and President Eisenhower subsequently had federalized the Guard and sent paratroopers to make it possible for the black students to attend school. The school board argued that school activities could not be conducted in the atmosphere caused by the black students.

The Court, in a unanimous unsigned opinion, reaffirmed Brown, denying the requested delay despite recognition of chaotic conditions during the 1957-1958 school year. Finding that the tension had been caused by behavior of State officials, the Justices declared that those conditions could be brought under control by State action. The Court cited Buchanan v. Warley,[20] saying:

> the constitutional rights of [black children] are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and the Legislature. Thus, law and order are not here to be preserved by depriving the Negro children of their constitutional rights.[21]

The Court rejected the position of the Governor and legislature that they were not bound by the holding in Brown, citing Article 6 of

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19. 358 U.S. 1 (1958).

20. 245 U.S. 60 (1917).

21. 358 U.S. 16.

the Constitution, which makes the Constitution the supreme law of the land. Later in Cohens v. Virginia,[22] the Court stated,

> The judicial authority is supreme in the exposition of the law of the Constitution....No state legislature or executive or judicial officer can war against the Constitution without violating his undertaking to support it.[23]

Other efforts to delay school desegregation included passage of numerous state anti-desegregation laws, including "interposition acts."[24] Although the Supreme Court declared interposition acts unconstitutional, the measures permitted evasion for a time.[25]

Another form of evasion and delay involved the use of pupil assignment and transfer plans. These included elaborate procedures that Black parents generally had to comply with to secure transfers of assignments of their children to formerly all-white schools. The use of pupil assignment was generally upheld by the Court, as in the Shuttlesworth case,[26] where the district court held that the Alabama pupil assignment statute was not unconstitutional on its face. Under that law in determining eligibility standards for transfer, there was provision for consideration of psychological

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22. 1 Cranch 137 (1803).

23. 358 U.S. 18.

24. The interposition concept considers that the United States is a compact of States, any one of which may impose sovereignty against the encroachment within its border of any decision of the Supreme Court or act of Congress, irrespective of the fact that the constitutionality of the act has been established by decisions of the Supreme Court. The doctrine denies the constitutional obligation of the States to respect decisions of the Supreme Court with which they do not agree.

25. Bush v. New Orleans Parish School Board, 188 F. Supp. 916 (E.D. La.), aff'd, 365 U.S. 569 (1961).

26. Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372 (N.D. Ala. 1958), aff'd 358 U.S. 10 (1958).

qualifications of pupils, possibility of threat of violence or disorder among pupils, and interference or interruption of established social or psychological relationships with teachers and teachers.

In [illegible] v. Board of Education,[27] a 1963 case involving pupil transfer, the Supreme Court held unanimously that pleas for new assignment practice was rejected in Brown. The provisions permitted students, assigned to schools without reference to race, to transfer from their assigned school if a majority of students in that school, or in their grade, were of a different race. It is apparent that the proposed transfer system perpetuated segregation. Indeed, there was no provision whereby students might transfer upon request to a school in which their race was in a minority. Classifications based on race for purposes of transfer between public schools, as here, violate the equal protection clause.

Another 1963 case, Tillman v. Board of Education,[28] eliminated the necessity for exhausting administrative remedies before seeking redress in the courts. This halted the continued use of bureaucratic procedures to delay implementation of constitutional rights under Brown.

An even clearer indication that the Supreme Court was becoming impatient with school board tactics designed to delay or evade school desegregation came in a re-examination of Griffin v. County School Board of Prince Edward County, Virginia.[29] In this case (which had been consolidated in the original Brown decision in 1954)

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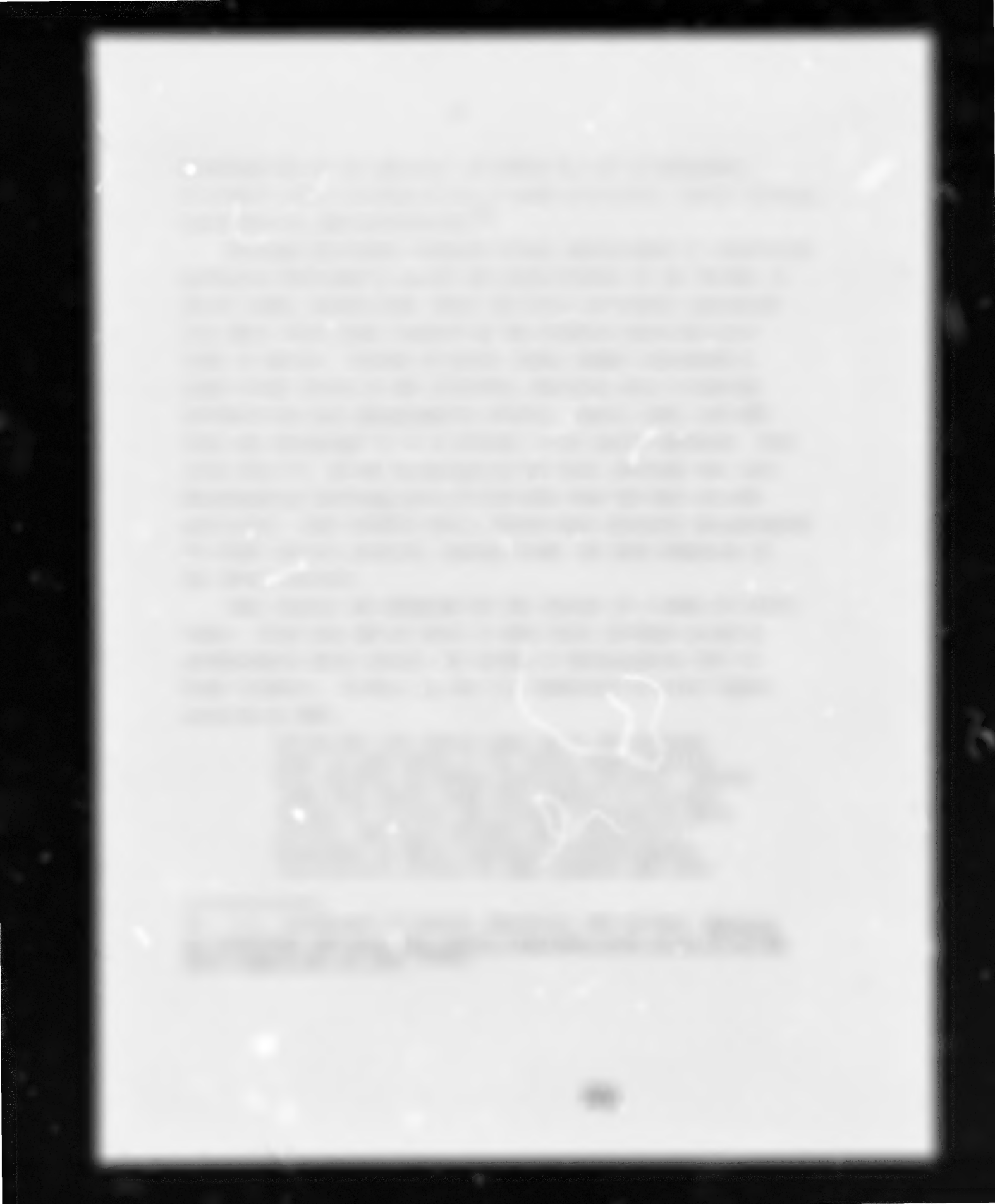
27. 373 U.S. 683 (1963). In Knoxville, Tenn., East High School, a formerly black school desegregated under geographic assignment, became all-black within 3 years under this transfer policy. The school was renamed Austin East, the name it had carried as a segregated school. The Reverend Frank Gordon, former president, Knox.-Ill. NAACP, and Mrs. Bennie Roberts, mother of Patricia Roberts, one of the first blacks to attend East High together with Josephine Jones, interviewed in Knoxville, Oct. 23, 1973.

28. 377 U.S. 968 (1963).

29. 377 U.S. 218 (1964).



> upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand, in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief.[49]

The Court concluded that what the school board had done through its freedom of choice plan was

> simply to burden children and their parents with a responsibility which Brown II placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a "white" school and a "Negro" school, but just schools.[50]

Although the Supreme Court did not expressly rule out the use of freedom of choice plans, the effect of the Green decision was to do so, since freedom of choice plans did not result in prompt conversion to a system without black or white schools "but just schools." By requiring the development of a plan that promised realistically to work immediately, HEW's position that terminal desegregation plans be implemented no later than the 1969-1970 school year was reinforced. There is evidence that HEW was prepared to recede, and in fact did recede, from this position under certain circumstances. Nevertheless, on balance it is clear that with the use of the guidelines and threatened or actual cut-off of Federal funds, desegregation increased for 5 years after passage of the 1964 Civil Rights Act, especially in the South.

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49. 391 U.S. 430, 464 (1968).

50. Ibid. at 466.

Despite cautious use of the enforcement mechanism, HEW had made more progress toward desegregation than had been achieved through litigation in the 10 years following Brown. But the emphasis in Government enforcement of desegregation soon shifted as the policy of the new national administration, in 1969 and thereafter, apparently was to move away from the "administrative fund cut-off requirements and return the burden, politically as well as actually, to the courts for compliance...."[51]

On July 3, 1969, the Attorney General and the Secretary of Health, Education, and Welfare reported that the Government was minimizing use of administrative enforcement under Title VI in favor of a return to litigation. In conformity with the statement, a change in Federal efforts to secure desegregation at the elementary and secondary level occurred.

The joint statement also declared that desegregation plans for school districts "must provide for full compliance now--that is, the 'terminal date' must be the 1969-70 school year." Yet, the statement continued, "limited delay" might be permitted: "In considering whether and how much additional time is justified, we will take into account only bona fide educational and administrative problems. Examples of such problems would be serious shortages of necessary physical facilities, financial resources or faculty."[52] The two Cabinet members said that "additional time will be allowed only where those requesting it sustain the heavy factual burden of

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51. Marian Wright Edelman, "Southern School Desegregation, 1954-1973; A Judicial-Political Overview," Blacks and the Law, Annals of the American Academy of Political and Social Science, May 1973, p. 40.

52. Statement by Robert H. Finch, Secretary of the Department of Health, Education, and Welfare, and John N, Mitchell, Attorney General, Press Release, July 3, 1969, p. 8.

proving that compliance with the 1969-70 time schedule cannot be achieved; where additional time is allowed, it will be the minimum shown to be necessary."[53]

In the same statement, however, more than a year after the Supreme Court's decision in Green, freedom of choice was declared an acceptable means to desegregate if the school district could "demonstrate, on the basis of its record, that...the plan as a whole genuinely promises to achieve a complete end to racial discrimination at the earliest practicable date."[54]

The changed policy on enforcement of school desegregation was illustrated in the case of 33 Mississippi school districts. In July and August 1969, the Office of Education in HEW had drafted "terminal" desegregation plans for implementation in fall 1969. This was in accordance with a July 3, 1969, court of appeals' order which directed these school districts to cooperate with HEW in developing desegregation plans.[55] The plans were to be submitted to the district court by August 11, ruled on September 1, and plans adopted by the court were to be implemented in the 1969-1970 school year.

The plans were submitted on August 11, as required. They called for an end to freedom of choice and, in almost all cases, complete desegregation in the 1969-1970 school year. Later in August, however, the Secretary of Health, Education, and Welfare wrote to the three district court judges of the Southern District of Mississippi, who were to decide which plans to adopt, and to a judge on the court of appeals. The Secretary requested that the submitted plans be withdrawn from consideration and that HEW be given until December to

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53. Ibid.

54. Ibid.

55. United States v. Hinds County School Board 417 F. 2d 853 (5th Cir. 1969).

submit new plans. On August 28, 1969, the court of appeals suspended its previous order and postponed the date for submission of the new plans to December 1, 1969.

The Secretary's letter stated that the major reasons for requesting withdrawal of the plans were that "the time allowed for the development of these terminal plans has been much too short" and that implementation of the plans "must surely, in my judgment, produce chaos, confusion, and a catastrophic educational setback." The court of appeals noted, however, that the timetable established had been proposed by the Government and that Government witnesses had stated unequivocally that the timetable was reasonable.

Although, as a condition of the delay granted, school districts were to take "significant action" to desegregate in 1969-1970, the districts continued to operate under their ineffective freedom of choice plans. Private plaintiffs sought to vacate the postponement order, but Supreme Court Justice Hugo Black denied the request, at the same time inviting the applicants to "present the issue to the full court at the earliest possible opportunity." The petition for a hearing by the Supreme Court was granted on October 9, set down for argument on October 23, and decided October 29, 1969.[56]

In the hearing before the full Court in Alexander, a case in which the Department of Justice intervened against black students, the Supreme Court refused to accede to the Government's request for delay, stating in a unanimous unsigned decision:

> The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of the Supreme Court. Against this background the Court of Appeals

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56. Alexander v. Holmes County Board of Education, 396 U.S. 1218 (1969).

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> should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under the explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.[57]

The Court held that local school systems are constitutionally required to desegregate first and litigate later. By staying the implementation of plans for full desegregation, the court of appeals had illegally frozen the status quo of past discrimination, even if for a short period.

In December [illegible], following the Supreme Court's order in Alexander, the court of appeals, in Carter v. West Feliciana Parish School Board,[58] ordered the Louisiana school board to adopt plans for desegregating faculty completely but authorized a delay in pupil desegregation until September 1970. Further review by the Supreme Court resulted in a January 14, 1970, unanimous unsigned opinion that stated:

> Insofar as the Court of Appeals authorized deferral of ending desegregation beyond February 1, 1970, that court misconstrued our holding in Alexander.... the judgments of the court of Appeals are reversed, and the cases remanded for further proceedings consistent with this opinion. The judgments in those cases are to issue forthwith.[59]

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57. 396 U.S. 19, (1964). The Mississippi case was not unique. In 1969, for example, HEW also acquiesced in delaying desegregation in Alabama and South Carolina. See U.S., Commission on Civil Rights, Federal Enforcement of School Desegregation (1969), pp. 52, 56. Alexander, however, also has been cited by HEW as a reason for unwillingness to use its single sanction, fund termination, based on an interpretation of the "at once" mandate as incompatible with its own administrative enforcement proceedings. Taylor Co., Fla. v. Finch also has been noted in this regard. Letter from Peter E. Holmes, Director, Office for Civil Rights, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Sept. 27, 1974.

58. 396 U.S. 290 (1970).

59. Ibid.

Although the Coordinated Plans and their successor, Revised Plans, were implemented, HEW soon began to place primary emphasis on the first step in the enforcement process, namely, negotiation with school districts to secure voluntary compliance. However, few enforcement proceedings were initiated where compliance was not secured, and those proceedings already underway did not result in termination of federal financial assistance, even after a determination of noncompliance. As a result, HEW failed to use its authority to achieve the objectives established by Title VI, which was to eliminate dual school systems at once. To date 13 school districts have funds been terminated since 1968.

The Office for Civil Rights (OCR), which handles Title VI compliance for HEW, reports that no aggregate data are available on results achieved through the emphasis on negotiation to secure voluntary compliance. Such data may be compiled in the near future. National statistics on desegregation since 1968, provided later in this report, sometimes are cited as measures of the effectiveness of negotiation. Those statistics, however, reflect not only the contribution of this emphasis, but also the contribution of other policies initiated and followed prior to 1968. The only way in which a judgment can be made on the impact of negotiation as a separate and distinct pressure is for the Office for Civil Rights to provide specific data on the results of negotiation.

In fact, between May 1969 and February 1971, the files of 80 school districts were transferred by HEW to the Justice Department for legal action, yet between February 1971 and June 1973 no files were transferred.[40] An independent study of HEW data on Northern desegregation, covered after months of negotiation and litigation, cites a total of 84 compliance reviews between 1965 and 1973 in

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40. From a forthcoming report by the U.S. Commission on Civil Rights which fully examines the role of HEW as one aspect of federal civil rights enforcement.

MISSING DATA

more than 1,000 teachers and assumes school discussion.[42] That a pupil of 11 enrolled in 1960, there was a steady decline to 61 percent in 1972.

Of the 31 systems, only 12 had been closed by the end of fiscal year 1972. In those districts, discriminatory practices were changed immediately, while 4 cases were closed when schools forcibly successfully developed court action. The one-two basements required justification in 4 cases, and 3 cases were brought to an administrative hearing.

For the 17 districts where compliance reviews were still open in 1972, in 12 cases a letter of probable noncompliance had not yet been sent; in 10 cases, the letter had been sent, but only 3 had reached the stage of administrative hearing. In 3 cases, the administration had been ordered pending primary litigation.

In order to institute districts, the most discriminatory and most letters of probable noncompliance to 21, involving 553,000 pupils. In contrast, in 20 of 31 southern districts where cases were initiated by private litigants, the courts found discrimination affecting 911,000 pupils.

Comparable data are not yet available for the North.

Following Brownell and Carter, on March 24, 1970, the Department issued a statement on elementary and secondary desegregation in which the question of busing was raised. The President contended that desegregation must proceed with the least possible disruption and emphasized the desirability of maintaining the neighborhood school principle.

Subsequently, in 1971, the President discussed an HEW desegregation plan which included the transportation of children and reiterated his position. The President said that he "consistently opposed busing

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42. This material is based on Center for National Policy Review, School of Law, Catholic University of America, Justice Delayed and Denied: The Record of Southern School Desegregation (Washington, D.C.: September 1972).

[illegible] of any racial[illegible] school children or enforce [illegible] and that no one "can avail to the busing of children actually but the idea of busing." Finally, the Court's work ends to [illegible] the Arizona Council and the NAACP Legal Fund [illegible] busing to the minimum required by the law.[87]

The Swann [illegible] dealt with cases [illegible] the same year, in Keyes v. School District No. 1, Denver, Colorado.[88] In Charlotte-Mecklenburg, busing existed as a consolidated [illegible] including the city of Charlotte and surrounding Mecklenburg County. The plan approved by the District Court and upheld by the Supreme Court in Swann attempted to desegregate the system by transferring students throughout the [illegible] schools of the district so that the schools' pupil populations reflected the county's racial patterns of the system.

In Keyes, the Court noted that busing of students is "a normal and accepted tool of educational policy"[89] and pointed to that "desegregation plans cannot be limited to the walk-in school."[90] The Court, [illegible] others, placed its approval on busing as an appropriate remedy for use in [illegible] desegregation. The Court carefully recognized that busing may be unfairly objectionable: "Where the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."[91] The Court also discussed appropriate limits on reassignments, stating, "Limits in the form of travel will vary with many factors, but probably none more [illegible]

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87. Statement by the President, White House Press Release, August 5, 1971.

88. 413 U.S. 1 (1973).

89. 413 U.S. 1, 28 (1973).

90. Ibid, at 26.

91. Ibid, at 28-29.

[illegible]

[illegible]

POST-BROWN CASES IN THE NORTH

In 1967 the U.S. Commission on Civil Rights issued Racial Isolation in the Public Schools, a report that discussed the extent of "racial isolation," evaluated its deleterious effects on young people, and assessed existing and proposed remedies. Sometimes, but not consistently, the terms segregation and racial isolation now are used interchangeably, but the former is a legal description and the latter is perhaps more prevalent in the social sciences.

Black parents in various Northern cities had begun filing lawsuits, similar to those in the South, in order to move their children from racially isolated schools into desegregated schools so that they might receive a better education. Although there were some victories in the courts, these Northern suits were generally unsuccessful,[85] perhaps because of the basic theory behind the suits. The lawyers who handled the early Northern cases argued that racial isolation in the public schools, whether caused directly by school officials or not, unconstitutionally deprived black children of equal educational opportunity.[86] In more recent cases that have proved successful, NAACP Legal Defense and Educational Fund staff and other lawyers have set out to show that existing school segregation is a result of State action by school authorities that, although not arising from segregation laws, has similar effect and intent.

Keyes v. School District No. 1, Denver, Colorado[87] was the first Northern school desegregation case decided by the Supreme Court. The

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85. See Bell, Race, Racism and American Law, p. 532 ff.

86. Robert L. Herbst, "The Legal Struggle to Integrate Schools in the North," Blacks and the Law, Annals of the American Academy of Political and Social Science, May 1973, p. 43.

87. 413 U.S. 189 (1973).

outcome of Keyes, both in the lower court and in the Supreme Court, lay in the carefully detailed proof of intentional actions by the Denver school board that resulted in segregation. Both courts ruled that, despite the fact that Colorado had never had a school segregation law, and in fact had a specific antidiscrimination clause in its constitution, the actions of the school authorities were sufficient to establish de jure segregation.

Justice Brennan, writing for the majority explained that the Denver school system:

> has never been operated under constitutional or statutory provision that mandated or permitted racial segregation in public education. Rather, the gravamen of this action...is that respondent School Board alone, by use of various techniques such as the manipulation of student attendance zones, school site selection and a neighborhood school policy, created or maintained racially or ethnically (or both racially and ethnically) segregated schools throughout the school district, entitling petitioners to a decree directing desegregation of the entire school district.[88]

The case arose when a newly elected school board rescinded three resolutions passed by the old board, which were designed to desegregate schools in the northeast portion of the school district. The new board replaced the resolutions with a voluntary student transfer program. An injunction against the new board's action was granted in district court. But the petitioners, recognizing that segregation was not limited to one segment of the city, also requested an order directing that all schools in the system be desegregated.

The lower court, however, required that a fresh showing of de jure segregation be made for each section for which the plaintiffs sought additional relief. The district court also held that its finding of intentional segregation in the area where it granted relief was not material to the question of intent to segregate in other areas of the city.

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88. 413 U.S. 192 (1973).

The Supreme Court, however, held that the school district could not be divided in such a manner. The Court noted how specific actions directed to a portion of a school system have "reciprocal" effects throughout the entire system. The Court wrote:

> ...where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system. Several considerations support this conclusion. First, it is obvious that a practice of concentrating Negroes in certain schools by structuring attendance zones or designating "feeder" schools on the basis of race has the reciprocal effect of keeping other nearby schools predominantly white. Similarly, the practice of building a school...to a certain size in a certain location, "which (sic) conscious knowledge that it would be a segregated school" has a substantial reciprocal effect on the racial composition of other nearby schools. So also, the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.

Thus, the Supreme Court held that school authorities had the burden of proving that the other segregated schools within the system were not the result of intentional actions, even if it were determined that the different sections of the system could be viewed as independent entities. On return of the case to the lower court, it was decided on December 11, 1973, that the Denver school district was segregated by the action of the school board or, in effect, had been operated as a dual school system. The court then set a schedule for the development of a desegregation plan by the fall of 1974, and it was implemented successfully and without incident.

Another important finding by the Supreme Court in Keyes was that the lower court erred in not placing "Negroes" and "Hispanos" in the same category for purposes of defining "segregated" schools, since both groups suffer the same educational inequities when their treatment is compared with the treatment afforded "Anglo" students.[89] Denver's school population is about 66 percent Anglo, 14 percent Negro, and 20 percent Hispano. The lower court had said that only schools which were predominantly Negro or predominantly Hispano could be called segregated and that only those schools with a 70 to 75 percent concentration of one of these groups would be a school considered likely to provide an inferior education.

The Supreme Court had held in several earlier cases that Hispanos constituted an identifiable class for purposes of the 14th Amendment. Since both Negroes and Hispanos suffer "economic and cultural deprivation and discrimination,"[90] educational inequities, and discrimination in treatment when compared to Anglos, the Supreme Court concluded that schools with a combined predominance of the two groups should be included in the category of segregated schools.

The issue of Northern metropolitan desegregation was considered by the Supreme Court for the first time in Milliken v. Bradley.[91] Although reaffirming previously established constitutional principles, including the use of transportation to overcome segregation, the decision represented a setback in efforts to desegregate urban school districts, particularly in the North but apparently in the South as well.

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89. These are the racially descriptive terms used by the parties in Keyes and in the Supreme Court opinion.

90. Language of lower court quoted in Keyes, 413, U.S. 189, 197-198 (1973).

91. 42 U.S.L.W. 5249 (U.S. July 25, 1974).

In this case, the Court majority, in a 5 to 4 judgment on July 25, 1974, found that a district court order for metropolitan desegregation was not supported by evidence that acts of suburban school districts, or acts of the State in those districts, had any effect on the discrimination found to exist in the Detroit city schools. Imposition of a multidistrict, areawide remedy was denied on grounds that such evidence was lacking.[92]

On April 7, 1971, the Detroit Board of Education had adopted a voluntary plan for partial high school desegregation. Three months later, the Michigan legislature passed a statute, known as Act 48, that delayed implementation of the plan. Subsequently, a successful recall election removed four board members who had favored the plan, and the new board members, together with those who originally opposed desegregation, rescinded the plan altogether.

On August 18, 1970, the Detroit branch of the NAACP and individual parents and students filed a complaint against the Governor of Michigan, the attorney general, the State board of education, the State superintendent of public instruction, and the Detroit Board of Education, its members, and its former superintendent of schools. The complaint alleged that the Detroit school system was racially segregated as a result of the official policies and actions of the defendants, challenged the constitutionality of Act 48, and called for implementation of a plan that would "maintain now and hereafter a non-racial school system."[93]

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92. Following the Supreme Court's decision in Milliken, on July 31, 1974, the Congress completed action on a compromise school assistance measure authorizing $25 billion over a 4-year period. The bill placed restrictions on busing for desegregation but did not go as far as the House originally proposed. The restrictions would not apply where courts find that correction of a constitutional violation requires busing, and a proposed provision for the reopening of past busing cases also was dropped in the compromise. Busing under voluntary desegregation plans is not restricted.

93. 42 U.S.L.W. at 3251.

In response to plaintiff's motion for an injunction to restrain enforcement of Act 48, the district court denied the motion, did not rule on Act 48's constitutionality, and granted motions of the Governor and Attorney General of Michigan for dismissal of the case against them. The court of appeals subsequently ruled that Act 48 was an unconstitutional interference with Fifth Amendment rights and that the state officials should not have been dismissed as defendants. The case was returned to the district court for trial on the merits of the substantive allegations of segregation in the Detroit schools.

In a decision on September 27, 1971,[94] the district court held that the Detroit public school system was racially segregated as a result of the unconstitutional practices of the Detroit Board of Education and the state defendants. The district court ordered the Detroit Board of Education to submit desegregation plans limited to the city and directed state defendants to submit desegregation plans for a three-county metropolitan area encompassing 85 separate school districts.

After consideration of the plans submitted, the district court rejected all Detroit-only plans, stating that "relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city." The district court held that "it must look beyond the limits of the Detroit school district for a solution to the problem" and that "district lines are simply matters of political convenience and may not be used to deny constitutional rights."

On June 14, 1972, the district court designated 53 of the suburban school districts plus Detroit as the "desegregation area." The court appointed a panel to design a desegregation plan in which no school, grade, or classroom in the area would be "substantially disproportionate to the overall pupil racial composition." The district court stated

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94. Ibid. at 5251, quoting Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich., 1971).

clearly that it had "taken no pride" in the issue of whether the [illegible] districts had "committed acts of de jure segregation."[95]

The court of appeals subsequently held that the record fully supported the findings of racial discrimination and segregation in Detroit, and that the district court was authorized and required to take effective measures to desegregate the school system. Further, it agreed that "any less comprehensive a solution than a metropolitan area plan would result in an all black school system [Detroit] surrounded by practically all white suburban school systems."[96]

An effective desegregation plan, the court held, had to include nearby school districts, and it asserted that such a plan could be appropriate because of the State's violations in Detroit and because of the State's authority to control local school districts. The court of appeals expressed no views on the composition of the "desegregation area" but said that all districts which might be affected must be given an opportunity to be heard with respect to the scope and implementation of the remedy.[97]

The Supreme Court decision in Milliken overturned on the meaning of the Constitution and the controlling role of law the finding in Brown that "separate educational facilities are inherently unequal."[98] While noting that the task in Milliken was acknowledged to be desegregation of the Detroit public schools, the Supreme Court held that both "the District Court and the Court of Appeals ascribed the primary blame [for a Detroit remedy to the metropolitan area only because of the] constitutional conviction that racial desegregation of Detroit would not produce the racial balance which they perceived as desirable."[99] Recognizing in dismantling a dual school system, the Court said, does not require any

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95. Ibid, at 1256.

96. Ibid., quoting 484 F. 2d 215, 245, 247 (6th Cir 1973).

97. Ibid, at 1255, quoting 484 F. 2d, at 250-251.

98. Ibid., quoting Brown v. Board of Education, 347 U.S. 483, 495 (1954).

99. Ibid, at 1256.

[illegible]

[illegible]

Another tactic to avoid desegregation was to provide indirect aid to private schools. Tuition grants usually equaled the per pupil share of State and local expenditure for public schools. Other aid to private schools took the form of "tax deductions or credits for donations made to such institutions, extension of state retirement benefits to teachers employed by private schools, and even reimbursement for transportation expenses of pupils attending the school."[109] Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, Arkansas, and North Carolina adopted laws of this type following the Brown decision.

The Southern States also sought to curb the activities of the NAACP and its Legal Defense and Educational Fund. Every Southern State except North Carolina enacted a variety of anti-NAACP laws. Most of these laws were aimed at preventing NAACP lawyers from engaging in "barratry," a legal term for persistent incitement and solicitation of litigation. Southern officials felt that, as the NAACP was handling so many school cases, the organization must have solicited or "stirred up" the litigation, since Southern blacks presumably "knew their places" too well to dare sue for school desegregation.

A South Carolina State representative, Charles G. Garrett, described the antibarratry laws as designed "to protect our Negro citizens and colored public employees, most of whom are not members of the organization, from the intimidation and coercion of the NAACP, as well as to limit its activities against the best interests of our white citizens." Other laws designed to cripple the NAACP

> included racial lobbyist laws requiring NAACP officials to register with the State; laws making it a misdemeanor to employ a member of the NAACP, and making membership in an organization advocating integration ground for dismissal from public employment; laws saying that all public employees must list the organizations to which they belonged and to which they made contributions; laws requiring the NAACP to file a list of its membership which foreign corporations (those chartered in another state) could engage.[110]

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109. Ibid., p. 88.

110. Sarratt, The Ordeal of Desegregation, pp. 36-37.

The NAACP was investigated almost continuously by various State committees and avidly persecuted as being part of the "Communist conspiracy," a significant public concern during this period. Unsuccessful attempts were made to get NAACP membership lists, which would have been invaluable in segregationist efforts to intimidate blacks further. In fact, the very segregated schools black children desired to escape were the recruiting grounds for student NAACP members.

Although the NAACP won all the cases[111] involving anti-NAACP laws in appellate courts and in the Supreme Court, the harassment hampered the organization in terms of time lost and money spent defending itself rather than fighting to desegregate schools. In addition to curtailing suits, however, another objective of the anti-NAACP legislation was to "discourage Negro teachers--the best-educated, the most articulate and the most valuable segment of the Negro community--from actively participating in the desegregation struggle."[112]

Federal Judge Constance Baker Motley, formerly associate counsel of the Legal Defense and Educational Fund, recalls that "those were frightening years to work for the NAACP, but there was work to be done."[113] So the NAACP desegregation effort was carried on and has continued to this day.

SCHOOL DESEGREGATION

Although there are few statistics reflecting the racial composition of the public schools in 1954, data gathered since then indicate the extent of desegregation progress. Prior to 1954, 17 Southern and Border States, in addition to the District of Columbia, had laws requiring segregated schools; several other States also supported such a system until after the Second World War. By 1964, however, despite

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111. See NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 357 U.S. 449 (1958); and Bates v. Little Rock, 361 U.S. 516 (1960).

112. Sarratt, The Ordeal of Desegregation, p. 38.

113. Interview in New York City, Nov. 11, 1973.

Brown, the school situation in the South was virtually unchanged. Some improvement occurred after the Civil Rights Act of 1964 was passed. But it has been only since 1968 that substantial reduction of racial segregation has taken place in the South.

In 1964, 9.3 percent of 3.4 million black school children in the 17-State area attended desegregated schools. Of these children, 89.2 percent were in Border States (Delaware, Kentucky, Maryland, Missouri, Oklahoma, West Virginia) and the District of Columbia. With the exception of Delaware, there was the least resistance to desegregation in these States. Yet, even here, 45.2 percent of black children still attended segregated schools.[114]

In 1964, only 1.2 percent of almost 2.9 million black pupils in the South (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia) attended school with whites, and over 50 percent of these pupils were in Texas. None of the almost 292,000 black pupils in Mississippi attended school with whites. In South Carolina, only 10 of nearly 259,000 black pupils attended school with whites. In Alabama, only 21 of more than 287,000 black pupils attended school with whites.

The number of black pupils attending school with whites in the 17 Southern and Border States had increased by an average of 1 percent a year until 1964. Then the rate accelerated somewhat with passage of the Civil Rights Act. By the end of the 1964-1965 school year, 10.9 percent of black pupils were in biracial schools. In the 11 States of the South, this figure reached 2.2 percent in 1964-1965 and 6 percent in 1965-1966. In the Border States it was 58.3 and 68.9 percent in those years, respectively.[115]

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114. The Southern Education Reporting Service is the primary source of the data summarized here; see Sarratt, The Ordeal of Desegregation, tables 1 and 2.

115. Southern School Desegregation, pp. 5-6.

Slow proportionate acceleration continued, but more than 2.5 million black pupils attended all-black schools in the South in 1966, a greater actual number than in 1954.[116] Moreover, the figures do not reflect the number of truly desegregated schools, since only one black pupil in a formerly all-white school caused the school to be considered desegregated.

National data compiled between 1968 and 1972 reflect significant changes in the South.[117] In 1968, 68 percent of black pupils attended all-minority schools in the 11 States of the South; but by 1970 this figure had been reduced to 14.1 percent, and by 1972, 8.7 percent. On the other hand, only 18.4 percent of black pupils in the South were in schools with less than 50 percent minority enrollment in 1968, but by 1970 this figure had increased to 40.3 percent and in 1972 stood at 46.3 percent. There had been more progress here than in the Border States, the North, or the West, and almost half of all black pupils in the South, 18 years after Brown, attended schools that were predominantly white.

In 1972 the percentage of black pupils in all-minority schools was 8.7 percent in the South, but 10.9 percent in the North and West, and 23.6 percent in the Border States. The proportion of black pupils in predominantly minority schools was 53.7 percent in the South, 68.2 percent in the Border States, but 71.7 percent in the North and West. In 1972, more than 3 million black pupils attended schools with more than 80 percent minority enrollment, but only some 865,000 of these pupils were in the South. On the other hand, 46.3 percent of black pupils in the South were in schools with less than 50 percent minority enrollment, compared to 31.8 percent in the Border States and only 28.3 percent in the North and West.

Between 1968 and 1972, the number of black pupils in schools with more than 50 percent white enrollment increased by almost 1 million.

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116. Ibid., p. 8.

117. See table 1 and charts 1 and 2. Unless otherwise indicated, the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, is the primary source for the data summarized here.

Table 1. BLACK SCHOOL ENROLLMENT BY GEOGRAPHIC AREA

Geographic Area	Total Pupils	Black Pupils Number	Pct	Black pupils attending schools which are: 0-49.9% Minority Number	Pct	50.0-74.9% Minority Number	Pct	75.0-100% Minority Number	Pct
Continental U.S.									
1968	43,153,568	4,182,173	14.5	1,447,291	23.4	540,421	8.6	4,274,441	68.0
1970	44,910,403	4,712,789	14.9	2,221,277	33.1	1,172,881	17.5	3,314,629	49.4
1972	44,844,423	4,796,238	15.2	2,443,377	36.3	1,238,280	18.5	3,072,581	45.2
(1) 32 North & West									
1968	28,579,744	2,703,054	9.5	744,020	27.6	406,568	15.0	1,550,440	57.4
1970	30,131,132	3,188,231	10.6	880,294	27.6	502,555	15.8	1,805,102	56.6
1972	29,914,241	3,250,804	10.9	918,393	28.3	513,631	15.8	1,918,762	55.9
(2) 11 South									
1968	11,043,485	2,942,960	26.6	560,692	18.6	84,418	2.9	2,317,650	78.8
1970	11,054,403	2,883,891	26.1	1,161,027	40.3	610,072	21.1	1,112,792	38.4
1972	10,987,040	2,894,403	26.3	1,338,140	46.3	680,899	23.8	866,364	29.9
(3) 4 Border & D.C.									
1968	3,730,317	636,157	17.1	180,569	28.4	48,417	7.8	406,171	63.8
1970	3,724,867	640,667	17.2	125,956	28.7	60,254	9.4	396,415	61.9
1972	3,742,703	630,429	17.4	209,844	31.8	54,749	8.4	389,235	59.8

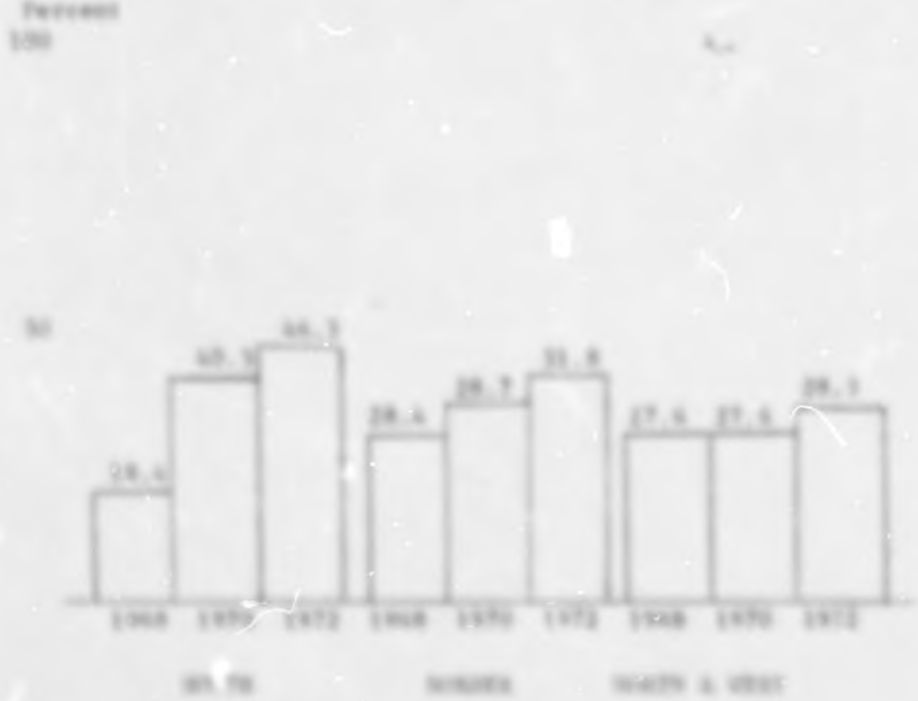
(1) Alas., Ariz., Cal., Col., Conn., Ida., Ill., Ind., Iowa, Kan., Maine, Mass., Mich., Minn., Mont., Neb., Nev., N.H., N.J., N.M., N.Y., N.D., Ohio, Ore., Pa., R.I., S.D., Utah, Vt., Wash., Wis., Wy.

(2) Ala., Ark., Fla., Ga., La., Miss., N.C., S.C., Tenn., Texas, Va.

(3) Del., D.C., Ky., Md., Mo., Okla., W.Va.

Office for Civil Rights, Department of Health, Education, and Welfare.

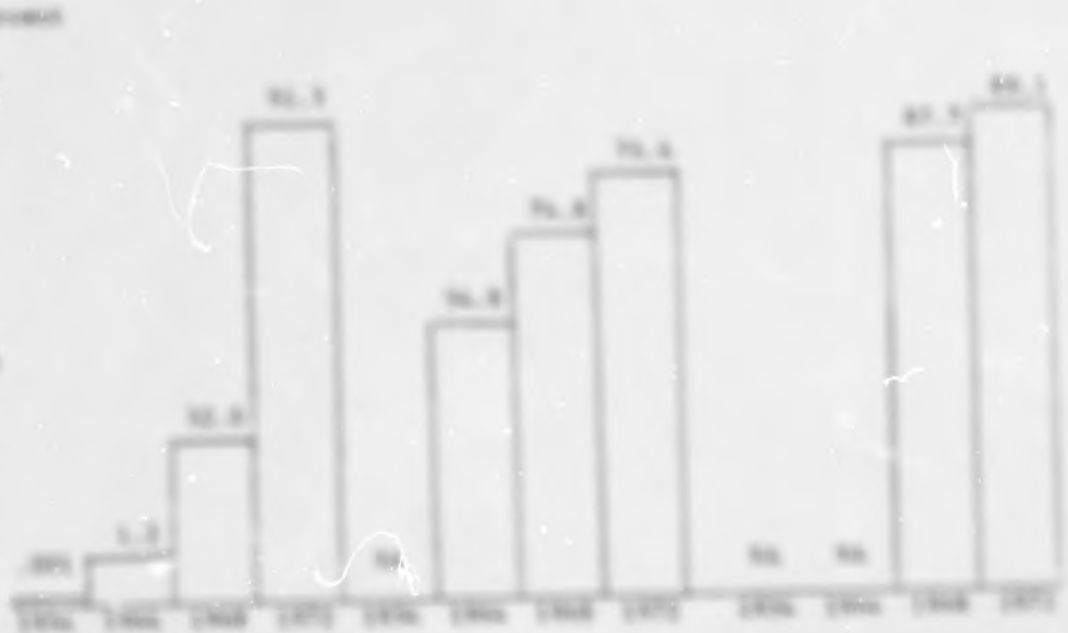
CHART 3.--REGIONAL DESEGREGATION, 1968-72
Blacks attending schools with 50-99.9 percent white enrollment



US TOTAL SOUTH SOUTH & WEST

Office for Civil Rights, Department of Health, Education, and Welfare.

Chart 2. [illegible]
Blacks attending schools with whites*



[illegible]

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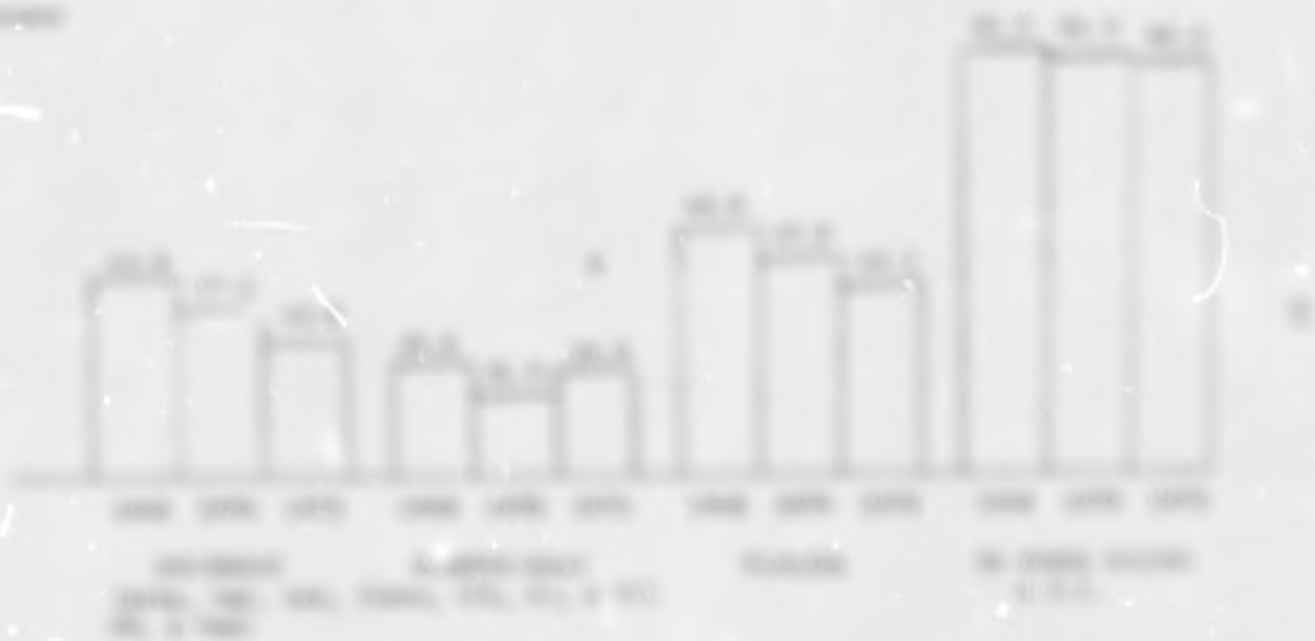
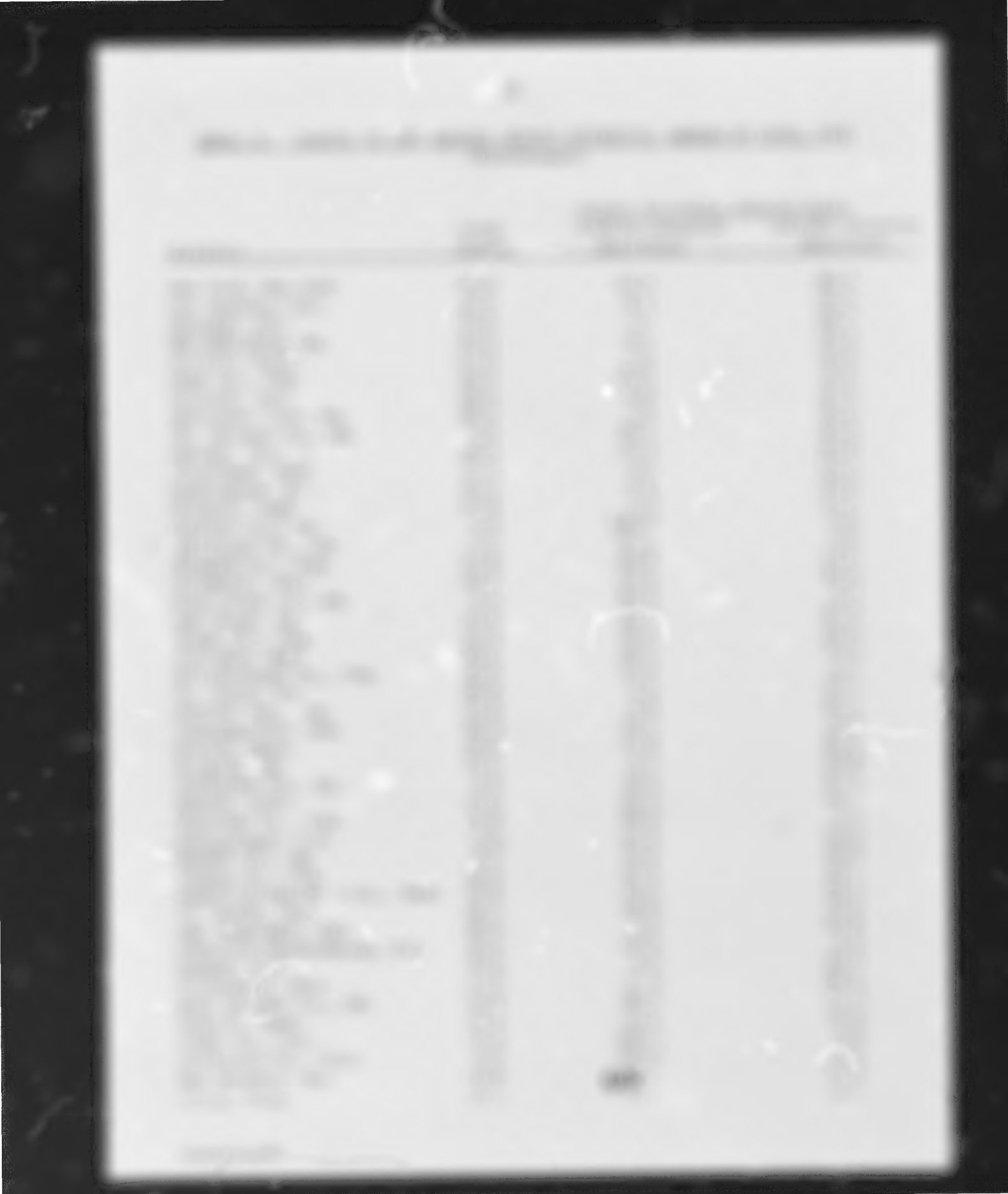
*Non-Southern schools with only one Black or one white pupil; excludes small all-white and all-minority schools

1954 = Six southern states.

Southern Education Reporting Service and Office for Civil Rights, Department of Health, Education, and Welfare.

[illegible]





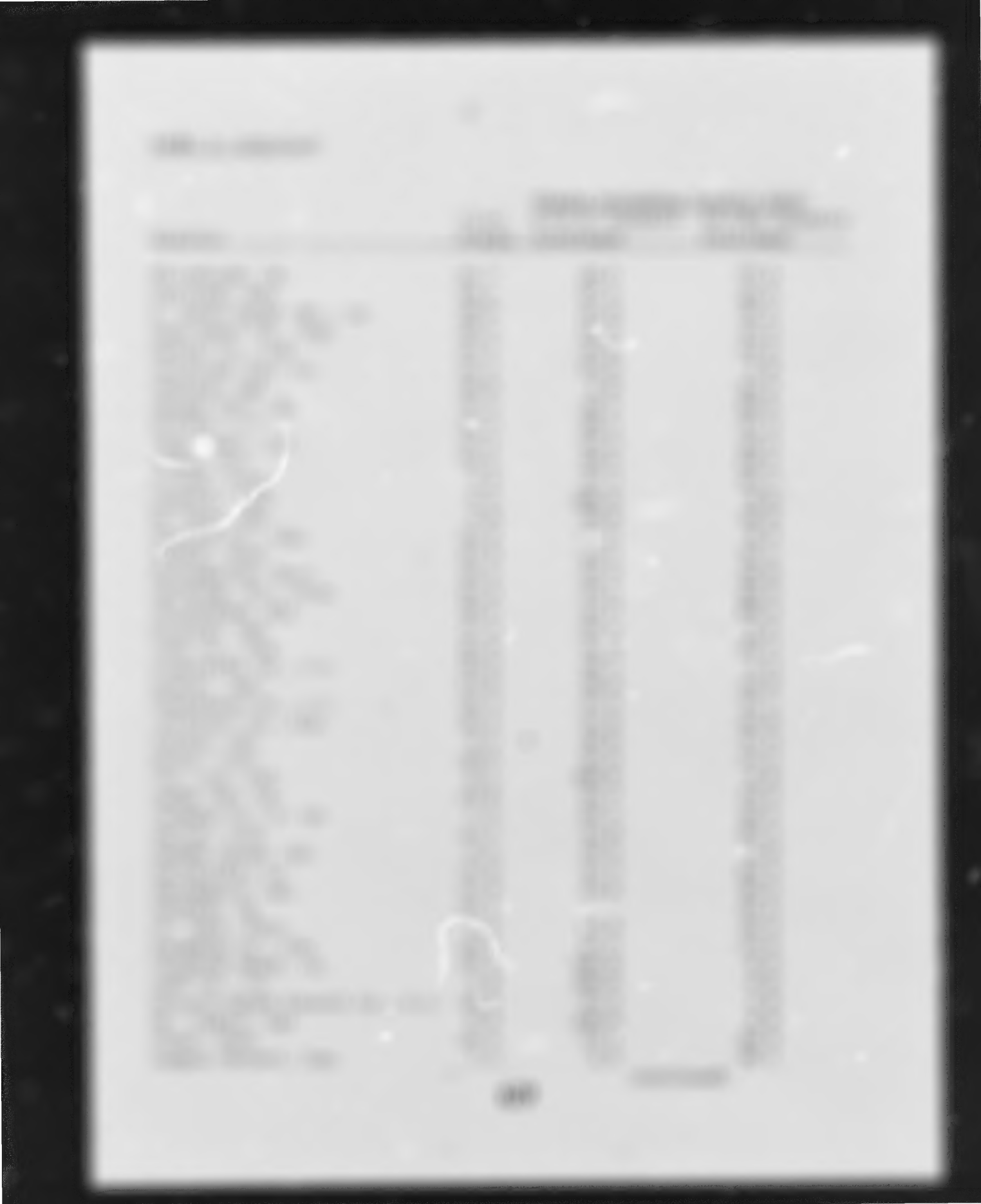


Table 3. Continued

District	Total Blacks	Blacks Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
Gary, Ind.	69.6	4.1	95.9
Shawnee Mission, Kan.	0.4	100.0	0.0
Richmond, Va.	70.2	6.4	93.6
Rochester, N.Y.	37.9	31.0	69.0
Ft. Wayne, Ind.	16.1	51.3	48.7
Des Moines, Iowa	9.1	56.2	43.8
Rockford, Ill.	13.6	53.1	46.9
Spring Branch, Tex.	0.1	100.0	0.0
Richmond, Cal.	30.3	41.1	58.9
Jersey City, N.J.	45.4	10.6	89.4
Calcasieu Par, La.	26.8	30.7	69.3
Muscogee Co., Ga.	34.2	78.5	21.5
Total (100) Districts	33.7	20.3	79.8

Office for Civil Rights, Department of Health, Education, and Welfare.

Table 4. SPANISH-SURNAMED AMERICANS IN SELECTED LARGE SCHOOL DISTRICTS, RANKED BY SIZE, 1972 (Percentages)

District	Total Span. Amer.	Spanish-Surnamed Americans Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
New York, New York	26.6	11.9	88.1
Los Angeles, Cal.	23.9	26.5	73.5
Chicago, Ill.	11.1	28.6	71.4
Philadelphia, Pa.	3.4	15.4	84.6
Detroit, Mich.	1.6	59.4	40.6
Dade Co., Fla.	24.9	32.0	68.0
Houston, Tex.	16.5	28.6	71.4
Pr. Georges Co., Md.	0.7	91.7	8.3
Dallas, Tex.	10.3	47.9	52.1
Cleveland, Ohio	2.0	90.1	9.9
Broward Co., Fla.	1.6	93.3	6.7
Milwaukee, Wis.	3.5	61.6	38.4
Montgomery Co., Md.	2.1	98.0	2.0
San Diego, Cal.	11.3	62.8	37.2
Hillsborough Co., Fla.	6.1	86.8	13.2
Orleans Par., La.	1.6	29.7	70.3
Boston, Mass.	5.3	29.1	70.9
Denver, Colo.	23.3	40.6	59.4
Albuquerque, N.M.	37.6	28.4	71.6
Orange Co., Fla.	1.3	93.0	7.0
Ft. Worth, Tex.	10.7	43.1	56.9
San Francisco, Cal.	14.0	3.7	96.3
Newark, N.J.	15.3	17.0	83.0
Clark Co., Nev.	3.6	100.0	0.0
Jefferson Co., Colo.	2.5	100.0	0.0
San Antonio, Tex.	64.3	5.1	94.9
Palm Beach Co., Fla.	4.1	65.4	34.6
Jefferson Par., La.	1.7	99.5	0.5
Oakland, Cal.	8.3	13.5	86.5
Buffalo, N.Y.	2.9	50.9	49.1
Long Beach, Cal.	7.3	83.9	16.1
Omaha, Neb.	1.6	98.3	1.7
Tucson, Ariz.	25.7	33.1	66.9
Granite, Utah	2.8	100.0	0.0
El Paso, Tex.	57.7	18.6	81.4
Toledo, Ohio	3.2	88.5	11.5
Wichita, Kan.	2.4	87.2	12.8
Austin, Tex.	21.7	33.7	66.3
Fresno, Cal.	20.5	59.1	40.9
San Juan, Cal.	2.8	100.0	0.0
Garden Grove, Cal.	12.1	94.4	5.6
Sacramento, Cal.	12.8	64.1	35.9

Table 4. Continued

District	Total Span. Amer.	Spanish-Surnamed Americans Attending Schools With: 0-49.9% Minority Enrollment	50-100% Minority Enrollment
St. Paul, Minn.	3.6	84.8	15.2
Mt. Diablo, Cal.	3.5	100.0	0.0
Corpus Christi, Tex.	53.0	21.5	78.5
Gary, Ind.	8.1	22.1	77.9
Rochester, N.Y.	5.6	53.8	46.2
Richmond, Cal.	6.2	69.9	30.1
Jersey City, N.J.	17.9	19.1	80.9
Total (49) Districts	14.7	26.3	73.7

Office for Civil Rights, Department of Health, Education, and Welfare.

In California, with decreasing total pupil enrollment, minority enrollment has increased in recent years. The number of minority pupils in predominantly minority schools has also increased, as has the number of segregated schools. More than 50 percent of black pupils in 1971 were in schools with a predominantly black enrollment, while more than 93 percent of white pupils were in heavily white schools.[130] Michigan has reported an increase of black pupils, and almost 50 percent of all black pupils attend schools with 95 to 100 percent black enrollment.[131] Both Oregon and Colorado, with relatively small minority enrollments, find that racial segregation is high and not decreasing, and that minority pupils are not receiving equal educational opportunity.[132]

There appear to be legitimate fears that the South is in a transitional stage and is moving toward duplication of Northern residential segregation as desegregated schools are undercut by increasingly segregated neighborhoods and cities.[133] In 60 of the Nation's largest school districts, out of 76 surveyed, white enrollment dropped between 1970 and 1972. One-third of these districts were in the South.[134] In one recent reporting, Atlanta pupil enrollment had increased from 38.3 percent black to 51.3 percent black,

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130. State of California, Department of Education, Racial and Ethnic Distribution of Pupils in California Public Schools, Fall 1971, p. 6.

131. State of Michigan, Department of Education, School Racial-Ethnic Census 1970-71, 1971-72, pp. 9, 14, 16.

132. State of Colorado, Department of Education, Ethnic Group Distribution in the Colorado Public Schools 1971-72, pp. 102, 103; and State of Oregon, Department of Education, Racial and Ethnic Survey 1972, p. 9.

133. Abraham Ribicoff, "The Future of School Integration in the United States," Journal of Law and Education, January 1972, p. 1.

134. Atlanta Council on Human Relations and others, It's Not Over in the South: School Desegregation in 43 Southern Cities 18 Years After Brown (Atlanta: 1972), p. 122 (hereafter cited as It's Not Over in the South).

while its schools increased from 91.3 percent white to 91.6 percent white, Houston's schools were 66.7 percent white; New Orleans schools were 57.1 percent white.[135] These are but examples of a more general trend.

There further appears to be a clear relation between the adoption of desegregation plans and the growth of private segregated academies.[136] Although private schools always have played a role in American education, never before have they been a major factor in the South. Yet, Mississippi alone had a threefold increase in private schools between 1969 and 1970, to well over 100 in all. Louisiana had over 150,000 pupils in private white schools in 1969, while South Carolina had at least one private academy in 31 of 46 counties. This movement seems common throughout the South, and private segregated schooling may not have reached its peak, since dual systems have not yet been completely abolished.[137]

By 1972 the Southern academy movement had expanded to enroll between 450,000 and 500,000 white pupils.[138] Following a 1971 desegregation order, seven academies enrolling 1,850 pupils opened in Nashville, Tennessee. Savannah, Georgia, lost 1,300 white public school pupils in 1972 upon the announcement of a desegregation plan.

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135. Ribicoff, "The Future of School Integration," p. 10.

136. See It's Not Over in the South and James Palmer, Sr., "Desegregation and the Private School Movement," Integrated Education, June 1971. Also see Jerry DeHuth, "Public School Turnovers in the South," America, Nov. 7, 1970.

137. U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, Hearings, 91st Cong. 2d sess., 1970, part 3A, pp. 1195, 1196 (hereafter cited as Senate Select Committee Hearings).

138. The South and Her Children, p. 14.

In addition, the loss of middle-class whi - pupils to private and parochial schools is significant in other areas of the nation. For example, some three-fifths of school-age children in Philadelphia and two-fifths of those in St. Louis and Boston attend nonpublic facilities.[139]

Desegregation, of course, raises the specters of busing and its attendant emotional ire; many white Americans, while 67 percent of American adults now say they favor integration, for example, 80 percent express opposition to busing.[140] However, residential segregation of urban minorities owing to conditions noted earlier) apparently is not yet an serious a barrier to school desegregation as has been assumed--given a full commitment to desegregation and the resolution of busing fears.

A recent analysis of 29 urban school systems indicates that, even in the largest cities, elimination of segregation is possible without exceeding practical limits for student travel time or economically reasonable limits on the number of pupils bused.[141] In examining alternative methods of school desegregation that rely on a minimum of busing, busing to provide almost complete desegregation can be as little as one-third to one-fourth of the amount ordinarily by conventional rule-of-thumb techniques. If busing were increased only 5 percent and school attendance areas rearranged to promote integration, even in the largest cities the number of black pupils attending majority-white schools would increase to over 70 percent.[142]

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139. Senate School Committee Hearings, part 2, p. 347.

140. Harris Poll, "What the Public Doesn't Know Part," Civil Rights Digest, vol. 5 (Summer 1973), p. 25.

141. See Lamanda Corporation, School Desegregation with Minimum Busing, December 1971, p. 4.

142. Eleanor Bloomberg, "Do Low Income Data Create and Perpetuate Myths about School Busing?," Journal of Intergroup Relations, Summer 1973, p. 37.

Total busing mileage, in fact, has decreased in many districts where no desegregation has taken place,[163] since segregation required the extensive transportation of both black and white pupils to separate schools. Even today, in many cases white pupils attending segregated private schools receive more busing than those attending desegregated public schools. Although the percentage of public transported to school nationally increased steadily from 1929 to 1970, less than 3 percent of all pupils bused are bused for purposes of desegregation. Former Secretary of Transportation John Volpe has stated that 3/4 of 1 percent of the increase in busing in 1972 was attributable to desegregation.[164] Although some 43.1 percent of all school children ride buses to school, only 3.7 percent of all educational expenditures are allocated for transportation,[165] and less than 1 percent of the rise in busing costs is due to desegregation.[166]

Yet, these facts are generally unknown, and myths about busing often continue to dominate public discussion.[167] A national survey in 1971 revealed not only vast misinformation about busing but also a close correlation between erroneous beliefs about busing and opposition to it. Asked six questions covering court-ordered desegregation, bus safety, the educational effects of desegregation, and the cost and extent of busing, only 14 percent of the respondents answered more than half of the questions correctly. Those with the most

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163. See Leonard Levine and Harry Levitzke, "The Busing Myth: Segregated Academies Are Even Children, and Further," Civil Rights, November 1971.

164. U.S., Commission on Civil Rights, Your Child and Busing (1972), p. 7 (hereafter cited as Your Child and Busing).

165. HEW Legal Services and Education Fund, It's Not the Distance, It's the Disease (New York: 1972), p. 21.

166. Klopenberg, "The Low Yellow Peril," p. 34.

167. See, Your Child and Busing.

racial stereotypes and have difficulty communicating with the class. Consequently, teacher loss is high in these schools, and those who remain often attempt to transfer as quickly as possible.[170]

The minority child suffers because classroom stability and adequate numbers of competent, understanding teachers are necessary for a good education. Moreover, an essential ingredient in equal educational opportunity for all pupils is exposure to teachers of varied backgrounds who can work together in an atmosphere devoid of racial or ethnic conflict. Thus, minority teachers are also needed in predominantly white schools to enhance the education of white pupils and faculty, as well as demonstrate that race and ethnicity are irrevelant to professional competence.

Of course, sensitive, experienced, and skilled white educators are needed in predominantly minority schools for the same reasons, and staffing problems in these schools do not negate the fact that many such teachers and administrators do exist. In fact, in many ways experience may be the least critical factor here, and many young and energetic staff members often relate to minority pupils as some experienced, more traditional, and perhaps more inflexible staff cannot.

The full achievement of equal educational opportunity has been described in terms of integration, not desegregation alone. Integration, in turn, "refers to an integrated interracial facility which boasts a climate of interracial acceptance."[171] What is suggested implies not assimilation of the minority by the majority but rather a pluralistic, multiracial society, reflected in the schools, in which

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170. See, "The Urban Crisis," for a description of these problems.

171. Senate Select Committee Hearings, part 2, p. 745.

individuals have the opportunity to learn from their own culture, other cultures, and other individuals, making personal choices without coercion and receiving recognition as human beings regardless of life or learning styles.

THE ATTACK ON DESEGREGATION

Opponents of desegregation, and many proponents as well, often suggest that, if desegregation was ordered to achieve equal educational opportunity, then desegregation must be justified primarily by the academic achievement of majority and minority pupils in desegregated schools. Achievement, in such cases, frequently is defined as the outcome reflected in cognitive test scores. The controversy surrounding testing itself, its meaning and cultural and language bias, generally is discounted. Even on these terms, however, the available data generally are supportive of desegregation.

There is some evidence that desegregation increases the academic achievement of blacks and other minority pupils, and the evidence is even more conclusive that there is no loss in achievement by white pupils under desegregation.[172] There is substantial evidence, of course, to show that minority pupils, conversely, are harmed by segregation:

> Negro children suffer serious harm when their education takes place in public schools which are racially segregated, whatever the source of such segregation may be.... Negro children who do attend predominantly Negro schools do not achieve as well as other children, Negro and white. Their aspirations are more restricted than those of other children and they do not have much confidence that they can influence their own futures. When they become adults, they are more likely to fear, dislike and avoid white Americans.[173]

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172. See Weinberg, Desegregation Research, perhaps the most comprehensive summary in a lengthy, technical, and continuing debate.

173. Racial Isolation, p. 193.

The most comprehensive study of desegregation effects, "The Coleman Report,"[174] confirms the value of social class integration in raising academic achievement, and such integration for minority pupils generally cannot be accomplished without racial and ethnic integration. Critics of the Coleman study, while attacking problems in numerous aspects of his work, nevertheless generally support his major findings.[175]

Perhaps the most consistent contrary position is the one suggesting that schooling has little impact on educational achievement, a position generally taken by Coleman himself except in regard to the integration of pupils from different backgrounds. Yet, even here, the argument is not clear:

> Research has not identified a variant of the existing system that is consistently related to student educational outcomes....We must emphasize that we are not suggesting that nothing makes a difference, or that nothing works. Rather, we are saying that research has found nothing that consistently and unamibiguously makes a difference in student outcomes.[176]

There is disagreement with this interpretation, of course, and many view teacher background and racial attitudes, educational programs and styles, level of racial tension, and numerous other factors as critical.[177] Those who support this view generally also consider

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174. James Coleman and others, Equality of Educational Opportunity (Washington, D.C.: U.S. Government Printing Office, 1966).

175. See Gary Orfield, "School Integration and Its Academic Critics," Civil Rights Digest, vol. 5 (Summer 1973), p. 8.

176. Harvey Averch and others, How Effective is Schooling? A Critical Review and Synthesis of Research Findings (Santa Monica, Calif.: The Rand Corporation, 1972), p. x.

177. See David Cohen, "Policy for the Public Schools: Compensation or Integration?", U.S. Commission on Civil Rights, November 1967; Toward Equal Educational Opportunity; and "The Urban School Crisis."

measures of self-concept, aspiration, ability to relate to persons of other backgrounds, and similar noncognitive variables as necessary as academic achievement in assessing the impact of desegregation.

In the midst of what some researchers consider inconclusive and contradictory findings, a lack of evidence on minority attitudes toward desegregation, and a Southern desegregation experience virtually untouched by research or systematic evaluation, what certainly appears clear to most scholars is that:

> Integration of a child from a low income background into a predominantly middle class school has more impact than any other factor in narrowing the gap in achievement scores, but the gap remains large.
>
> Newly desegregated school systems seldom show substantial increases in minority student performance during the first year of integration.
>
> The test scores of white students are not affected by the desegregation process.
>
> Social class integration is usually impossible for minority group students without racial integration.
>
> Racial and class integration are desirable objectives of national policy, everything else being equal.[178]

On the other hand, if social science research eventually demonstrates that measurable academic achievement is increased as a result of desegregation, so much the better. But conclusive evidence is not a prerequisite for desegregation.

The same argument obtains in another area. Perhaps as a consequence of the school desegregation controversy, and certainly contributing to it, is a renewed interest in the genetic aspects of intelligence. Discussions about racial differences, if not the alleged inferiority of blacks, have persisted.[179] More importantly, some recent evaluations of data on intelligence and achievement attempt to provide academic support for some of these arguments and for

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178. Orfield, "School Integration," p. 4.

179. See, for example, James J. Kilpatrick, The Southern Case for School Segregation (New York: Crowell-Collier, 1962), pp. 43-77; also John R. Baker, Race (New York: Oxford, 1973).

educational policy based on them.[180] The preponderance of scientific opinion obviously is contrary to such views,[181] which generally are considered racist regardless of source, yet increasingly it is possible to find serious discussion of them. In what way, however, would national policy be changed by findings in this regard? Indeed, would separate schools be provided for the allegedly more intelligent and less intelligent, as determined by test scores of limited meaning and disputed value?

All such considerations would be basic issues the 14th amendment to the Constitution, not scientific findings, govern both desegregation of the public schools and the transportation, if required, to achieve it.[182] Decisions affecting desegregation rest on legal and moral grounds, rather than on scientific research, regardless of its results. The point is clearly made in a 1970 court opinion: "Brown articulated the truth that Plessy chose to disregard: that relegation of blacks to separate facilities represents a declaration by the State that they are inferior and not to be associated with."[183] The same opinion goes on to deal with the

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180. See, for example, Arthur R. Jensen, "How Much Can We Boost I.Q. and Scholastic Achievement?" Harvard Educational Review, vol. 39, no. 1 (Winter 1969), pp. 1-123. Also see H. J. Eysenck, The IQ Argument (Freeport, N.Y.: The Library Press, 1972).

181. See, for example, Jerome S. Kagan and others, "Discussion: How Much Can We Boost IQ and Scholastic Achievement?" Harvard Educational Review, vol. 39, no. 2 (Spring 1969), pp. 273-356. Also see Margaret Mead and others, eds., Science and the Concept of Race (New York: Columbia University Press, 1968) and Melvin M. Tumin, ed., Race and Intelligence (New York: Anti-Defamation League of B'nai B'rith, 1963).

182. Thomas Pettigrew and others, "Busing: A Review of 'The Evidence,'" The Public Interest, Winter 1973, pp. 113-114.

183. Concurring opinion by Judge Sobeloff in Brunson v. Board of Trustees, 429 F. 2d 820, 825 (4th Cir. 1970).

the argument that resources should be placed in majority white schools for educational reasons:

> This idea, then, is no more than a reconstruction of the notion of black inferiority, as justification for separation of the races, and no less than a return to the spirit of Dred Scott.
>
> The investors and proponents of this theory primarily misunderstood the philosophical basis for desegregation. It is not founded upon the concept that white children are a necessary resource...it is not that black children will be improved by association with their betters, certainly it is hoped that under integration members of each race will benefit from unfettered contact with their peers. But school segregation is forbidden simply because its perpetuation is a living insult to the black children and irreparably retards the education they receive. This is the precise lesson of Brown....This is no mere issue of expert testimony....It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since Brown their arguments have not been permitted to withstand the constitutional command.[184]

EDUCATIONAL ATTAINMENT

Regardless of racial segregation or isolation, during the past 20 years the gap between blacks and whites has narrowed significantly in terms of their educational attainment. Educational opportunity has been greatly expanded since Brown, and discrimination greatly reduced, in a variety of ways.

In 1950, for example, 37.3 percent of all whites in the United States had completed high school, compared to only 16.3 percent of all blacks.[185] By 1972, 55.6 percent of whites had completed high school, but 43.7 percent of blacks now were high school graduates.

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184. Ibid, at 834, 835.

185. All data in this section are based on reports by the Bureau of the Census, U.S. Department of Commerce: 1950 Census of Population, 1960 Census of Population, and Current Population Reports, various series.

> history and in a context of racism and the function of racism is to impose inequality on the lower status groups. In a racist society the lower status minority group does not have and will not be give the ultimate power necessary to control the quality of its alleged "own" institutions.[192]

The Commission concurs.

But there also are some contemporary black advocates of separate schooling who, beneath their despair, cling to the goal of an integrated multiracial society. They find it difficult to live with half-measures. Twenty years after Brown, they still see their children, or grandchildren, attending segregated schools in the South and in the North. Or they see them attending desegregated but not as yet integrated schools, and they assess the costs of this effort.

Some black Americans now often equate desegregation with a plethora of disasters: school closings in the minority community so that white pupils need not attend classes in "the ghetto"; establishment of all-white private schools; busing that places a heavier responsibility on black pupils than on whites; dismissal or demotion of black teachers and administrators in the South and fruitless searches for reportedly nonexistent "qualified" minority staff in the North; failure to bring about integration in the school and the classroom; curricula inadequate to the needs of a multiracial society that nevertheless remain unchanged following desegregation.

The list is extensive and the complaints are specific. It is no wonder that there is cynicism, that some black Americans consequently feel it is legitimate to question whether, in the short run at least, the price paid for desegregation is too exorbitant.

Yet, progress has been made and much greater progress is possible. These conditions need not exist. Dr. Clark's argument is still cogent and convincing, and an additional argument should be identified: the

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192. Ibid.

longer the delay in implementing the constitutional principles announced in Brown, the more substantial will be the cost to the entire Nation in economic, social, and human terms.

School integration is critical not only to blacks and other minorities but also to White Americans. Separation is a denial of equal opportunity to white pupils who otherwise would "benefit from unfiltered contact with their peers."[193] The benefits of school integration accrue to all and they need to be evaluated in ways extending beyond the measurements of achievement tests.

School integration remains the touchstone of all racial equality in a pluralistic society--a society in which it is possible for the individual members of many racial and ethnic groups to maintain their distinctive identity or assimilate the majority culture, based on individual preferences; a society in which differences are valued and contribute to the national life of all citizens. Separate remains unequal. Integration must move forward for moral and legal reasons, irrespective of the difficulties along the way. Integration has not failed where there has been a genuine effort to achieve it. It still represents the Nation's only road to domestic tranquility. As Martin Luther King summed up his message to America:

> Men often hate each other because they fear each other; they fear each other because they do not know each other; they do not know each other because they cannot communicate; they cannot communicate because they are separated.[194]

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193. 429 F. 2d 820, 824 (4th Cir. 1970).

194. Quoted by Malcolm Boyd, "Martin Luther King: Man, Mystery," Washington Post, Jan. 20, 1974, p. C-3.

Finding No. 1

School desegregation has progressed substantially in the South. The proportion of black pupils attending predominantly white schools had increased from less than 19 percent in 1968 to more than 36 percent in 1972. A significant number of black pupils, nevertheless, continue to attend predominantly minority schools 20 years after Brown.

Finding No. 2

School desegregation progress in the North has been minimal. The proportion of black pupils attending predominantly white schools had increased less than 1 percent between 1968 and 1972. In 1972 more than 71 percent of black pupils continued to attend predominantly minority schools.

Finding No. 3

Without positive action, segregation in other areas, both North and South, appears likely to increase, and urban-suburban racial divisions will be intensified. Half of all black pupils are enrolled in the Nation's largest and most segregated school districts, where there has been a continuing decline in white enrollment and increase in black enrollment. The same pattern is apparent where there is a large population of Spanish speaking background.

Finding No. 4

Both fears about school desegregation have proved groundless, and desegregation generally is working where it has been seriously attempted. Given adequate preparation, planning, and leadership, desegregation can and has been a force contributing to substantial improvement in the quality of education, including many other factors the opening of new opportunities to know and understand persons of differing backgrounds.

Finding No. 5

"Freedom of choice" has proved a totally ineffective method of school desegregation. It has received support in North and South as a political compromise between the constitutional imperative to eliminate segregation and the resistance of many white Americans to the changes in the educational system this requires. It is a compromise that leads to only one result: denial of equal educational opportunity.

Finding No. 6

The federal government's commitment to desegregation must include termination of federal financial assistance to school systems maintaining segregated schools. In Adams v. Richardson, the federal district court held that where negotiation and conciliation do not